

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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THOMAS ARTHUR VIGIL,

Plaintiff,

v.

KANWAL A. BRAR, *et al.*,

Defendants.

Case No. 3:25-CV-00044-MMD-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

[ECF Nos. 1, 1-1, 1-2]

Before the Court is Plaintiff Thomas Arthur Vigil ("Vigil"), applications to proceed *in forma pauperis* (ECF Nos. 1, 1-1), and his *pro se* civil rights complaint (ECF No. 1-2). For the reasons stated below, the Court recommends that Vigil's *in forma pauperis* applications, (ECF Nos. 1, 1-1), be granted, and his complaint, (ECF No. 1-2), be dismissed, with prejudice.

I. IN FORMA PAUPERIS APPLICATIONS

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities."

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 LSR 1-1.

2 “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with
3 some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
4 Cir. 1981) (quotation marks and citation omitted). A litigant need not “be absolutely
5 destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,
6 335 U.S. 331, 339 (1948).

7 A review of the applications to proceed IFP reveals Vigil cannot pay the filing fee;
8 therefore, the Court recommends that the applications, (ECF Nos. 1, 1-1), be granted.

9 **II. SCREENING STANDARD**

10 Prior to ordering service on any defendant, the court is required to screen an *in*
11 *forma pauperis* complaint to determine whether dismissal is appropriate under certain
12 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28
13 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint for
14 the enumerated reasons). Such screening is required before a litigation proceeding *in*
15 *forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507
16 (9th Cir. 2015).

17 “[T]he court shall dismiss the case at any time if the court determines that – (A) the
18 allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious;
19 (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief
20 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-
21 (iii).

22 Dismissal of a complaint for failure to state a claim upon which relief may be
23 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
24 1915(e)(2)(B)(ii) tracks that language. When reviewing the adequacy of a complaint under
25 this statute, the court applies the same standard as is applied under Rule 12(b)(6). See,
26 e.g., *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for
27 determining whether a plaintiff has failed to state a claim upon which relief can be granted
28 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6)

1 standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling
2 on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir.
3 2000) (citation omitted).

4 The court must accept as true the allegations, construe the pleadings in the light
5 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*
6 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in *pro se* complaints
7 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes*
8 *v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

9 A complaint must contain more than a “formulaic recitation of the elements of a
10 cause of actions,” it must contain factual allegations sufficient to “raise a right to relief
11 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
12 “The pleading must contain something more. . . than. . . a statement of facts that merely
13 creates a suspicion [of] a legally cognizable right of action.” *Id.* (citation and quotation
14 marks omitted). At a minimum, a plaintiff should include “enough facts to state a claim to
15 relief that is plausible on its face.” *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678
16 (2009).

17 A dismissal should not be without leave to amend unless it is clear from the face
18 of the complaint the action is frivolous and could not be amended to state a federal claim,
19 or the district court lacks subject matter jurisdiction over the action. *See Cato v. United*
20 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th
21 Cir. 1990).

22 **III. SCREENING OF COMPLAINT**

23 In his complaint, Vigil sues Defendants A. Kanwal Brar and V. Cedonio for state
24 law claim of “illegal conviction.” (See ECF No. 1-2.) Vigil does not specify the basis for
25 this Court’s jurisdiction.

26 Vigil’s complaint is rambling, nonsensical, and filled with incomplete sentences.
27 Dismissal on those grounds alone is appropriate. Federal Rule of Civil Procedure 8(a)(2)
28 requires that a complaint contain “a short and plain statement of the claim showing that

1 the pleader is entitled to relief, in order to give the defendant fair notice of what the . . .
2 claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (quotation and
3 alteration omitted). It must also include “a demand for the relief sought. . . .” Fed. R. Civ.
4 P. 8(a)(3). Here, Vigil’s largely incomprehensible narrative makes it nearly impossible for
5 the Court to identify the factual or legal basis for his claims or the nature of his requested
6 relief. Vigil states no claim upon which relief may be granted, and given the vague nature
7 of the allegations, amendment would be futile. See *Cato*, 70 F.3d at 1106.

8 Notwithstanding the above, this Court also lacks subject matter jurisdiction in this
9 case as the only claim alleged in the Complaint is for state law issues. Federal courts are
10 courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374
11 (1978). Generally, for the court to have original federal subject matter jurisdiction, a case
12 must either involve diversity of citizenship between the parties or involve a claim arising
13 under federal law. See *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (“Absent
14 diversity of citizenship, federal-question jurisdiction is required.”) Alternatively, the Court
15 may exercise supplemental jurisdiction in certain cases. See 28 U.S.C. § 1367.

16 For the Court to have federal question jurisdiction, the complaint must arise under
17 federal law. 28 U.S.C. § 1331. Generally speaking, “[a] cause of action arises under
18 federal law only when the plaintiff’s well-pleaded complaint raises issues of federal law.”
19 *Hansen v. Blue Cross of Cal.*, 891 F.2d 1384, 1386 (9th Cir. 1989). Here, Vigil’s claim for
20 wrongful conviction is governed by state law. See NRS 118A.390 (Nevada statute
21 regarding a tenant’s ability to recover damages for unlawful eviction). Accordingly,
22 because there is no “issue of federal law” raised by Vigil’s claim for relief, there can be no
23 federal question jurisdiction over this claim. *Id.*

24 As for diversity jurisdiction, under 28 U.S.C. § 1332(a)(1), federal courts have
25 diversity jurisdiction over civil actions “where the matter in controversy exceeds the sum
26 or value of \$75,000 ... and is between ... citizens of different States.” 28 U.S.C. § 1332.
27 Furthermore, the diversity jurisdiction statute “applies only to cases in which the
28 citizenship of each plaintiff is diverse from the citizenship of each defendant.” *Caterpillar*

1 *Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Here, the Court lacks diversity jurisdiction because
2 both Vigil and Defendants are citizens of Nevada and thus there is no diversity of
3 citizenship. (ECF No. 1-2.)

4 Finally, the Court also finds that it lacks supplemental jurisdiction over the state
5 law claim. Courts have supplemental jurisdiction “over all other claims that are so related
6 to claims in the action within such original jurisdiction that they form part of the same case
7 or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(b).
8 However, as discussed above, the Court lacks original jurisdiction over the state law
9 claim. Because supplemental jurisdiction requires that the Court have original jurisdiction
10 over at least one *other* claim, the Court may not exercise supplemental jurisdiction over
11 the state law claim.

12 In sum, the Court lacks subject matter jurisdiction over Vigil’s claim and therefore
13 the complaint should be dismissed for lack of subject matter jurisdiction.

14 **IV. CONCLUSION**

15 For good cause appearing and for the reasons stated above, the Court
16 recommends that Vigil’s applications to proceed *in forma pauperis*, (ECF Nos. 1, 1-1), be
17 granted, and his complaint, (ECF No. 1-2), be dismissed, with prejudice, as amendment
18 would be futile.

19 The parties are advised:

20 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
21 Practice, the parties may file specific written objections to this Report and
22 Recommendation within fourteen days of receipt. These objections should be entitled
23 “Objections to Magistrate Judge’s Report and Recommendation” and should be
24 accompanied by points and authorities for consideration by the District Court.

25 2. This Report and Recommendation is not an appealable order and any
26 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
27 District Court’s judgment.

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1 **V. RECOMMENDATION**

2 **IT IS THEREFORE RECOMMENDED** that Vigil's applications to proceed *in forma*
3 *pauperis*, (ECF Nos. 1, 1-1), be **GRANTED**;

4 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 1-
5 2);

6 **IT IS FURTHER RECOMMENDED** that Vigil's complaint, (ECF No. 1-2), be
7 **DISMISSED, WITH PREJUDICE**; and,

8 **IT IS FURTHER RECOMMENDED** that this action be **CLOSED**, and that judgment
9 be entered accordingly.

10 **DATED:** January 24, 2025.

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13 **UNITED STATES MAGISTRATE JUDGE**
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